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Session Law 89-145

Florida Senate & House of Representatives

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S 315 GENERAL BILL/CS by Judiciary-Criminal; Johnson; Souto
(Similar CS/H 451, H 703, S 1079)
Controlled Substances/Offenses; (THIS BILL COMBINES S 315,1079) establishes crime of engaging in continuing criminal enterprise; provides for criminal penalties; exempts such crime from application of sentencing guidelines; prohibits adjudication of guilt or imposition of sentence from being suspended, deferred, or withheld; requires mandatory minimum sentence be served prior to eligibility for parole or provisional credits. Creates 893.20. Effective Date: 10/01/89.
02/24/89 SENATE Prefiled
03/24/89 SENATE Referred to Judiciary-Criminal; Appropriations
04/04/89 SENATE Introduced, referred to Judiciary-Criminal; Appropriations –SJ 34
04/14/89 SENATE Extension of time granted Committee Judiciary-Criminal
04/20/89 SENATE On Committee agenda—Judiciary-Criminal, 04/24/89, 10:00 am. Room-2C-(301)
04/24/89 SENATE CS combines this bill and 1079; Comm. Report: CS by Judiciary-Criminal –SJ 211
04/25/89 SENATE CS read first time –SJ 224; Now in Appropriations –SJ 211
05/03/89 SENATE Extension of time granted Committee Appropriations
05/12/89 SENATE On Committee agenda—Appropriations, 05/18/89, 2:00 pm. Room-A-(LL-37)
05/16/89 SENATE Comm. Report: Favorable by Appropriations, placed on Calendar –SJ 380
05/25/89 SENATE Placed on Special Order Calendar –SJ 450; CS passed; YEAS 39 NAYS 0 –SJ 466
06/26/89 HOUSE In Messages
06/02/89 HOUSE Received, placed on Calendar; Read second time; Read third time; CS passed; YEAS 115 NAYS 0 –HJ 1133
06/02/89 ORDERED enrolled –SJ 1406
06/12/89 Signed by Officers and presented to Governor
06/27/89 Approved by Governor; Chapter No. 89-145

NOTES: Above bill history from Division of Legislative Information’s FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.
I. SUMMARY:

A. Present Situation:

Although Chapter 893, Florida Statutes, penalizes unlawful acts involving controlled substances, currently, it does not target persons who assume leadership roles (i.e. "kingpins") in organized drug operations for enhanced punishment purposes.

The Florida Racketeer Influenced and Corrupt Organization (RICO) Act generally applies to groups of individuals engaged in some form of organized criminal activity, such as drug smuggling. Chapter 895, F.S. (1987 and Supp. 1988). The RICO Act prohibits the use of a pattern or series of criminal acts, including Chapter 893 violations, to acquire or maintain an interest in an enterprise or to participate in such enterprise. ("Enterprise" encompasses most legal and illegal entities, including individuals and businesses.) Significantly, however, Chapter 895 subjects all persons convicted of RICO violations to the same statutory penalties, regardless of their level of involvement in the enterprise.

A RICO violation constitutes a first degree felony, punishable by up to 30 years in prison and/or substantial fines. The actual sentence imposed, however, will be determined in accordance with sentencing guidelines. Civil remedies, including forfeiture, also apply. ss. 895.04, 895.05, F.S.

Further, the Florida Statutes penalize the act of conspiring with another person or persons to commit any offense. Conspirators and co-conspirators, however, are subject to the same statutory penalties, regardless of their role in the conspiracy. Penalties imposed are generally reduced one degree from the offense conspired (e.g., if the crime conspired to is a first degree felony, criminal conspiracy is penalized as a second degree felony). s. 777.04, F.S. Sentencing guidelines apply to determine the actual sentence imposed.

Conspiracy to commit drug trafficking, however, is punishable as if the person had actually committed the offense. The act constitutes a first degree felony; minimum mandatory penalties apply. s. 893.135(5), F.S.

B. Effect of Proposed Changes:

CS/SBs 315 and 1079 would create a new offense designed to focus on leaders ("kingpins") involved in large-scale drug enterprises. A person would be guilty of the act of engaging in a continuing criminal enterprise if he or she: (1) has committed 3 or more felonies under Chapter 893 under Chapter 893 in concert with five or more persons; (2) holds a position as organizer, supervisor, or manager with respect to these persons; and (3) obtains substantial assets or resources from these acts.
Significantly, convictions would not be necessary to establish the three predicate felony drug offenses necessary to establish the separate offense of engaging in a continuing criminal enterprise.

This offense would constitute a life felony, punishable either by a term of imprisonment for life or by imprisonment of not less than 25 years and a $500,000 fine. Sentencing for the offense would be exempt from sentencing guidelines. Further, CS/SBs 315 and 1079 would not allow a court to suspend, defer, or withhold adjudication of guilt or imposition of a sentence. An offender also would not be eligible for parole or provisional credits prior to serving the 25-year minimum mandatory portion of the sentence. Presumably, however, gain-time could be earned and, in cases involving mandatory sentences which constitute a term of years (versus life), such gain-time could be applied to reduce the actual sentence served.

These provisions would be interpreted in accordance with judicial decisions construing a similar federal law.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Department of Corrections, absence of empirical data precludes an accurate estimation of the impact of CS/SBs 315 and 1079 on the offender population. Due, however, to the minimum mandatory 25-year sentence proposed by this bill, potentially, some impact exists, which would increase over a long period of time.

According to the Office of the Statewide Prosecutor, the number of prison admissions for RICO offenses over the last 5 years has been: for 1983-84, 14; for 1984-85, 10; for 1985-86, 10; for 1986-87, 10; and for 1987-88, 51. (The dramatic increase in 1987-88 may be attributable to the application of sentencing guidelines, which punish RICO offenses as category 9 offenses.)

The Statewide Prosecutor's Office estimates that the more focused approach of the continuing criminal enterprise provision would result in the prosecution of only a very small percentage (perhaps no more than 10%) of those offenders who are otherwise prosecutable under the RICO statute. For a point of reference, the effect of this bill on prison admissions for fiscal year 1987-88 would have been 5. Therefore, the office estimates that passage of CS/SBs 315 and 1079 would have minimal impact on the prison system.

III. COMMENTS:

CS/SBs 315 and 1079 is based on an analogous federal law, which was enacted in 1970 to prescribe stiff penalties for professional criminals engaged in continuing criminal drug violations primarily for profits. Federal law provides that a person who violates the federal narcotics law as part of a continuing series of violations in concert with five or more persons for whom such person occupies a supervisory or other management position, and from which such person derives substantial income or resources, is guilty of engaging in a continuing criminal enterprise. Penalties range from 20-year minimum mandatory terms of imprisonment to mandatory life imprisonment without parole if certain aggravating factors are present. 21 U.S.C. s. 848 (1982 and Supp. 1986); Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181 (1988).
The federal continuing criminal enterprise provision has withstood several attacks alleging that it is violative of the Constitution. See, e.g., United States v. Manfredi, 488 F.2d 588, 602-603 (2nd Cir. 1973), cert denied sub nom. La Cosa v. United States, 417 U.S. 936 (1974) (vagueness attack rejected); United States v. Erwin, 793 F.2d 656, 668-69 (5th Cir. 1986) (statute does not violate the Eighth Amendment).

IV. AMENDMENTS:

None.
I. SUMMARY:

A. PRESENT SITUATION:

Chapter 893, F.S., is the Florida Comprehensive Drug Abuse Prevention and Control Act. This chapter defines controlled substances and provides that it is unlawful to sell, purchase, manufacture, or deliver a controlled substance unless authorized by this chapter or unless such person is licensed to do so by the appropriate federal agency.

It is a third degree felony to be in possession of a controlled substance without a prescription or order of a practitioner. It is also a third degree felony to acquire or obtain or attempt to acquire or obtain a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; to affix a false label to a controlled substance; to fail to prepare a report required under this chapter, or to prepare a false report.

Section 893.13 provides that it is a third degree felony to sell, possess, purchase, manufacture, deliver, or possess with intent to sell, purchase, manufacture, or deliver a controlled substance, contained in Schedule I (c), Schedule II (c), Schedule III and Schedule IV drugs, such as amphetamines, barbiturates, LSD, cannabis, peyote, and phenobarbital.

It is a second degree felony to sell, possess, purchase, manufacture, deliver or possess with intent to sell, purchase, manufacture or deliver a controlled substance contained in Schedule I (a), (b), (d), and Schedule II (a) and (b), such as opium, morphine, heroin and methaqualone. It is also a second
It is a first degree felony to sell, possess, purchase, manufacture, deliver or possess with intent to sell, purchase, manufacture or deliver more than 10 grams of any Schedule I (a) or (b) substance, such as heroin, morphine and opium. It is also a first degree felony for an adult to deliver to a minor or to use a minor as an agent in the sale or delivery of Schedule I (a), (b), (d), or Schedule II (a) or (b) substance.

Section 893.135, F.S., provides minimum mandatory terms of imprisonment and first degree felony to traffic in specific amounts of controlled substances, as follows:

**Three years and $25,000**
100 - 2000 pounds of cannabis

**Three years and $50,000**
4 - 14 grams or morphine, opium
28 - 200 grams of cocaine, or phencyclidine
200 grams - 5 kilos of methaqualone

**Five years and $50,000**
2000 - 10,000 pounds of cannabis

**Five years and $100,000**
200 - 400 grams of cocaine or phencyclidine
5 - 25 kilos of methaqualone

**Ten years and $100,000**
14 - 28 grams of morphine, opium

**Fifteen years and $200,000**
10,000+ pounds of cannabis

**Fifteen years and $250,000**
400+ grams of cocaine or phencyclidine
25+ grams of morphine, opium

Chapter 895, the Florida Racketeer Influenced and Corrupt Organization Act, provides penalties, both criminal and civil, for criminal enterprises which participate in racketeering activities and obtain real property or the establishment or operation of any enterprise. Enterprise is defined as "any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities" in s. 895.02(3). Violation of the RICO law is a first degree felony, punishable as provided in s. 775.082, s. 775.083 or 775.084. Pecuniary value
is defined as money, a negotiable instrument, a commercial instrument; or property or service with a value in excess of $100.

B. EFFECT OF PROPOSED CHANGES:

This bill provides a definition and penalty for any one who operates a continuing criminal enterprise. A continuing criminal enterprise is defined as any person who occupies a position of organizer, supervisor, or other position of management over five or more persons, who commits three or more felony violations of chapter 893 in concert with these five persons, and who obtains substantial assets or resources as a result of this activity.

A person convicted of engaging in a continuing criminal enterprise is guilty of a life felony and shall be sentenced to a mandatory minimum term of imprisonment of 25 years and a fine of $500,000, and adjudication of guilt and imposition of sentence shall not be suspended, deferred, or withheld. The offender is not eligible for parole or provisional release prior to serving the mandatory minimum term of imprisonment. This bill exempts the sentencing from the sentencing guidelines authorized by s. 921.001. In addition, this bill states that separate convictions and sentences for violations of this section and for felony violations of chapter 893 are not prohibited.

This bill provides that it is the intent of the Legislature that this act be interpreted in concert with its federal analog, 21 U. S. C. s. 848.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 893.20, F. s., to establish the crime and penalties for operating a continuing criminal enterprise and provide the intent of the Legislature that this act be interpreted in concert with its federal analog.

Section 2 provides an effective date of October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

   None

2. Recurring or Annualized Continuation Effects:

   Indeterminate

3. Long Run Effects Other Than Normal Growth:

   Indeterminate
4. **Appropriations Consequences:**

The Department of Corrections states that there would not be an impact the first five years, but that there could be an indeterminate impact in subsequent years.

B. **FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:**

1. **Non-recurring or First Year Start-Up Effects:**
   None

2. **Recurring or Annualized Continuation Effects:**
   None

3. **Long Run Effects Other Than Normal Growth:**
   None

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. **Direct Private Sector Costs:**
   None

2. **Direct Private Sector Benefits:**
   None

3. **Effects on Competition, Private Enterprise, and Employment Markets:**
   None

D. **FISCAL COMMENTS:**

The Statewide Prosecutor estimates that this bill will apply to ten percent of the RICO convictions in the State. The number of admissions for RICO offenses over the last five years is as follows:

83-84: 14; 84-85: 10; 85-86: 10; 86-87: 10; 87-88: 55.

The Statewide Prosecutor estimates that there would be a minimal economic impact at least on the prison system as a result of the passage of this bill.

The Department of Corrections states that there is not enough data to provide an accurate estimate of impact on the offender population, however, due to the minimum mandatory 25 year sentence the potential exists for some impact which would increase over a long period of time.
III. LONG RANGE CONSEQUENCES:

This bill is consistent with the State Comprehensive Plan, s. 187.201(7), F. S., in that it emphasizes the reduction of drug-related crimes is a coordinated and integrated strategy to combat drug trafficking.

IV. COMMENTS:

This bill is consistent with the Committee Mission Statement in that it establishes a harsher and more severe method of punishment for major drug traffickers. It is also consistent with the Issues Policy Statement in that it creates a longer prison sentence for major drug traffickers.

This bill was developed by the Statewide Prosecutors Office and is supported by the Florida Department of Law Enforcement. The Statewide Prosecutor stated that this bill is an enhanced RICO provision.

The United States Attorney for the Southern District of Florida recommends the creation of continuing criminal enterprise statutes and states: "They are a critical component of federal prosecution and we strongly recommend that they be provided for on the state level. C.C.E. statutes enhance forfeiture laws and insure substantial terms of mandatory imprisonment for leaders of narcotics organizations."

The federal government has a continuing criminal enterprise statute, 21 U.S.C. s. 848, which has been interpreted by the federal courts. It is not necessary under the federal court interpretations that there be three separate prior felony convictions in order to utilize the C.C.E. penalties. The C.C.E. penalties can be utilized under one prosecution which contains the required elements of the offense. These three felony violations can occur at the same time. According to the Drug Task Force of the U.S. Attorney's Office in the Northern District of Florida, if one can find a witness to one felony with an organizer of five or more persons in which substantial assets or resources were obtained, then the witness most likely was a witness to six or seven additional felonies. According to the Drug Task Force, a person does not traffic in drugs once, rather it is an ongoing business. This bill is an attempt to punish that major drug trafficker more severely.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:

Staff Director:

Jeffrey I. Beckham

Robin S. Hassler

STANDARD FORM 1/89